

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION
STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION
2006 OCT 10 10:11 PM

ORIGINAL

Kathleen Markie Miller

CHIEF CLERK'S OFFICE

-vs.-

06-0571

The Peoples Gas Light and Coke
Company

Complaint as to billing and/or charges
in Chicago, Illinois.

PLAINTIFF'S RESPONSE TO MOTION TO DISMISS

Kathleen Markie Miller respectfully submits this response in opposition to The Peoples Gas Light and Coke Company, through it attorney Mark L. Goldstein's, Motion to Dismiss. I request that the Administrative Law Judge and the Illinois Commerce Commission accept my complaint filed with the Illinois Commerce Commission on August 18, 2006.

ARGUMENT

The Peoples Gas Light and Coke Company refers to Section 9-252 of the Illinois Public Utilities Act("PUA") (220 ILCS 5/9 252) reads, in part, as follows: "All complaints for the recovery of damages shall be filed with the Commission within 2 years from the time the produce, commodity or service as to which complaint is made was furnished or performed."

As no produce, commodity or service was provided to me with regards to the disputed

amount and this was an erroneous transfer to my account which is present on my bill as of today, dismissal based on statute of limitations does not apply. Copy of most recent bill is attached. I am not requesting a recovery of damages, my request is to be billed for services which I received, not for services to a location to which I never resided or held interest in, nor did I receive any service.

The rules of the Illinois Commerce Commission incorporate the Code of Civil Procedure regarding motions to dismiss found at 735 ILCS 5/2-615. See 735 ILCS 5/1-108(b). In deciding a motion to dismiss, the court or agency must accept all facts pleaded as true and indulge all reasonable inferences in favor of the plaintiff. Sunderland v. Illinois Bell Co., 254 Ill.App.3d 983, 988 (1983); Katz v. Belmont National Bank, 112 Ill 2d 64, 67(1986). All facts alleged in the complaint are taken as true, as well as all reasonable inferences that can be drawn therefrom. Long v. New Boston, 91 Ill.2d 456, 463, 440 N.E.2d 625 (1982); Sherman v. Kraft General Foods, Inc., 272 Ill. App. 3d 833, 835, 651 N.E.2d 708, 710, 209 Ill. Dec. 530 (1995). A cause of action will not be dismissed on the pleadings unless it clearly appears that no set of fact can be proved which will entitle plaintiff to recover. Charles Hester Enterprises, Inc. v. Illinois Founders Insurance Co., 114 Ill. 2d 278, 286, 499 N.E.2d 1319 (1986).

Section 9-252 of the Illinois Public Utilities Act("PUA") (220 ILCS 5/9 252) reads, in part, as follows: "All complaints for the recovery of damages shall be filed with the Commission within 2 years from the time the produce, commodity or service as to which complaint is made was furnished or performed..." The Peoples Gas Light and Coke Company's interprets this to mean that the complainant must file the complaint within two years "from the time petitioner began to receive service." The Peoples Gas Light and Coke Company provides no support for

this interpretation. The Peoples Gas Light and Coke Company's interpretation directly contradicts Commission rulings in previous cases, where the Commission has interpreted the statute of limitations in 9-252 to bar recovery on claims submitted more than 2 years after the *last* date of the service at issue in the complaint. In Patel v. ComEd, the Commission ruled in response to a complaint regarding incorrect billing that, "[i]n order that the Commission be vested with the authority to hear and determine her cause, [Petitioner] was required to file a complaint within two years of the *last* date on which ComEd furnished the service complained of." ICC Docket No. 98-0208(1999) (emphasis added). Additionally, the Commission's interpretation of Section 9-252 of the Public Utilities Act is supported by case law in other areas. In Illinois tort law in cases involving continuing acts, the statute of limitations begins to run from the date of the last overt act in furtherance of the act that allegedly caused damage to the plaintiff. Starcevich v. City of Farmington, 110 Ill.App.3d 1074, 1079, 443 N.E.2d 737, 740 (1982); City of Rock Falls v. Chicago Title & Trust Co., 13 Ill.App.3d 359, 300 N.E.2d 331 (1973); Sommer v. United Savings Life Insurance Co., 128 Ill.App.3d 808, 471 N.E.2d 606 (1984).

Further, as stated in motion to dismiss, defendant states my claim is of a "transferred of a final bill" to my account according to Title 83: Public Utilities, Chapter I: Illinois Commerce Commission, Sub Chapter b, Part 280.90 Past Due Bills and Late Payment Charges, subsection f) A utility may not continue to assess a late payment charge on any final bill which has been outstanding for more than 12 months. This is repeated each and every month and is continued as of the date of this complaint. Copies of my bills for the last 90 days submitted herein reflect this. Therefore, the claim being time barred is invalid.


I would also argue that The Peoples Gas Light and Coke Company's representative John Riordan did not inform me of my option to have my dispute heard through the Illinois Commerce Commission as was his obligation as stated in Title 83: Public Utilities, Chapter I: Illinois Commerce Commission, Sub Chapter b, Part 280.160 Dispute Procedures, subsection b) Where any dispute between a utility and an applicant, customer or user cannot be resolved between the parties, each utility shall direct its personnel engaged in personal contact with the applicant, customer or user seeking such dispute resolution under the provisions of this Part, to inform him/her, if he/she expresses non acceptance of the decision of such personnel, of his/her right to have the problem considered and acted upon by supervisory personnel of the utility. Each utility shall further direct such supervisory personnel to inform such an applicant, customer, or user who expresses non acceptance of the decision of such supervisory personnel, of his/her right to have the problem reviewed by the Commission, and shall furnish him/her with the telephone number and address of the Consumer Assistance Section of the Illinois Commerce Commission.

Mr. Riordan did not furnish me with the information as was his obligation. Mr. Riordan had also indicated to me during a telephone conversation in August of 2006, after I had informed Mr. Riordan that I would file a complaint with the Illinois Commerce Commission that I did not need to file a complaint that it was not necessary. This can be confirmed by Mr. John Schaub at the Illinois Commerce Commission. Mr. Riordan's action is in violation of the above code and is an example of delay tactic's used to utilize the Commission's regulations to manipulate this dispute.

CONCLUSION

Based upon the foregoing, this case is properly brought before the Illinois Commerce Commission and I respectfully request that my complaint against The Peoples Gas Light and Coke Company not be dismissed.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Kathleen Markie Miller', written over a horizontal line.

Kathleen Markie Miller

Kathleen Markie Miller
1843 N. Normandy Avenue
Chicago, IL. 60707
Phone: (773) 531-2563

Bill Date	Account Number	Payment Due Date	Amount Due
07/20/2006	9 5000 1229 2921	08/11/2006	\$2,826.17

Name **Kathleen Miller**
Service Address **1843 N Normandy Ave Hsc**
Chicago IL 60707-3927
Service Classification **Rate 1 - Small Residential Service - Heating**

\$ 36.55

Activity Since Last Bill

Previous Balance \$2,869.36
Thank You For Your Payment - \$123.40
Late Payment Charge \$43.66
Balance **\$2,789.62**

Delivery Charge

Customer Charge \$9.45
Under 50 Therms \$8.13
\$17.58

Environmental Charge

\$0.02000 x 22.35 Therms = \$0.45

Gas Charge

\$0.68070 x 22.35 Therms = \$15.21

Taxes

Chicago Municipal Tax \$33.24 x 8.24 % = \$2.74
State Tax \$33.24 x 0.10 % = \$0.03
State Gas Revenue Tax \$0.024 x 22.35 Therms = \$0.54
\$3.31

Total Current Charges

AMOUNT DUE

Messages

At the time of this statement, your account was past due. Please pay \$2,826.17 today. Continual late payments can result in a negative credit rating, deposit requests and even disconnection of service.

To pay your gas bill by credit card, call 1-866-295-0086. A convenience fee will apply.

8-1-6 1977
\$2,826.17

Peoples Gas
130 E Randolph Dr - Chicago IL 60601

Customer Inquiries 1-866-556-6001
Emergencies 1-866-556-6002
En Español 1-866-556-6003
TDD Line 1-866-556-6007

Current Usage

Billing Period From 06-21-06 To 07-20-06 29 days

Meter Reading

Meter Number **P1754529**
Current Actual 1551 07-20-06
Previous Actual 1529 06-21-06
Difference 22 (100 Cubic Feet)

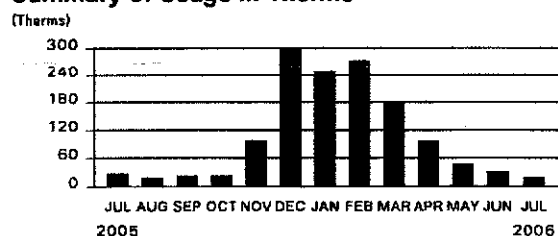
Therm Conversion

22 x 1.016 BTU Factor = 22.35 Therms

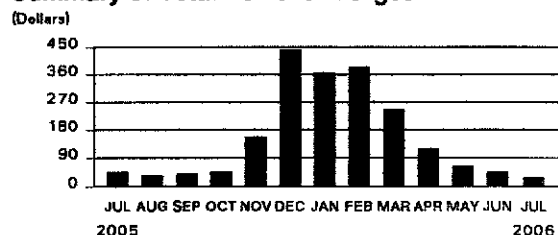
Average Daily

	Jul 2005	Jul 2006
Therms Used	1.11	.77
Temperature	77 °F	73 °F

Summary of Usage in Therms



Summary of Total Current Charges



The gas charge for July is 68.96 cents per therm and for June it was 66.10 cents per therm. The gas charge reflects how much Peoples Gas pays for gas, which is what you pay.

See back of bill for definitions of terms used on this bill.

Bill Date	Account Number	Payment Due Date	Amount Due
08/22/2006	9 5000 1229 2921	09/13/2006	\$2,873.14

Name **Kathleen Miller**
Service Address **1843 N Normandy Ave Hsc
Chicago IL 60707-3927**
Service Classification **Rate 1 - Small Residential Service - Heating**

Activity Since Last Bill

Previous Balance \$2,826.17
Thank You For Your Payment - \$36.55
Late Payment Charge \$44.31
Balance **\$2,833.93**

Delivery Charge

Customer Charge \$9.45
Under 50 Therms \$36375 x 25.40 Therms = \$9.24
\$18.69

Environmental Charge \$02020 x 25.40 Therms = \$0.51

Gas Charge \$64640 x 25.40 Therms = \$16.42

Taxes

Chicago Municipal Tax \$35.62 x 8.24 % = \$2.94
State Tax \$35.62 x 0.10 % = \$0.04
State Gas Revenue Tax \$024 x 25.40 Therms = \$0.61
\$3.59

Total Current Charges

AMOUNT DUE

Messages

PAID

CHECK DATE

✓ 9/8/9

9-1-6

\$39.21

\$2,873.14

Peoples Gas
130 E Randolph Dr - Chicago IL 60601

Customer Inquiries 1-866-556-6001
Emergencies 1-866-556-6002
En Español 1-866-556-6003
TDD Line 1-866-556-6007

Current Usage

Billing Period From 07-20-06 To 08-22-06 33 days

Meter Reading

Meter Number **P1754529**
Current Actual 1576 08-22-06
Previous Actual 1551 07-20-06
Difference 25 (100 Cubic Feet)

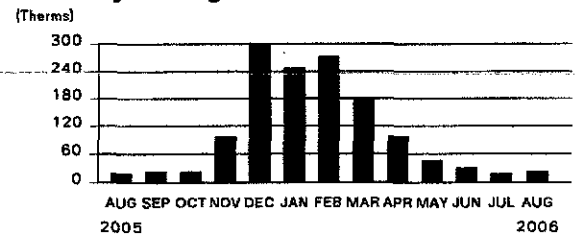
Therm Conversion

25 x 1.016 BTU Factor = 25.40 Therms

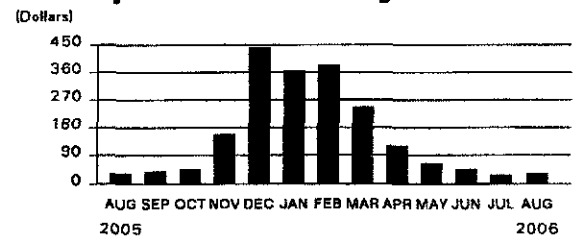
Average Daily

	Aug 2005	Aug 2006
Therms Used	.78	.77
Temperature	75 °F	76 °F

Summary of Usage in Therms



Summary of Total Current Charges



The gas charge for August is 62.48 cents per therm and for July it was 68.96 cents per therm. The gas charge reflects how much Peoples Gas pays for gas, which is what you pay.

See back of bill for definitions of terms used on this bill.

Bill Date	Account Number	Payment Due Date	Amount Due
09/18/2006	9 5000 1229 2921	10/10/2006	\$1,154.27

Name **Kathleen Miller**
Service Address 1843 N Normandy Ave Hsc
Chicago IL 60707-3927
Service Classification **Rate 1 - Small Residential Service - Heating**

Activity Since Last Bill

Previous Balance \$2,873.14
Thank You For Your Payment - \$39.21
Late Payment Charge \$17.51
Balance **\$2,851.44**

Delivery Charge

Customer Charge \$9.45
Under 50 Therms \$3.6375 x 17.27 Therms = \$6.28
\$15.73

Environmental Charge

\$0.02160 x 17.27 Therms = \$0.37

Gas Charge

\$5.9890 x 17.27 Therms = \$10.34

Taxes

Chicago Municipal Tax \$26.44 x 8.24 % = \$2.18
State Tax \$26.44 x 0.10 % = \$0.03
State Gas Revenue Tax \$0.024 x 17.27 Therms = \$0.41
\$2.62

Total Current Charges

TOTAL BALANCE

Messages

At the time of this statement, your account was past due. Please pay \$2,880.50 today. Continual late payments can result in a negative credit rating, deposit requests and even disconnection of service.

Of the Total Balance, \$1,726.23 is in dispute and is not included in the Amount Due.

PAID

CK NO 10-6
DATE 10-6
\$29.06

\$29.06

\$2,880.50

Peoples Gas
130 E Randolph Dr - Chicago IL 60601

Customer Inquiries 1-866-556-6001
Emergencies 1-866-556-6002
En Español 1-866-556-6003
TDD Line 1-866-556-6007

Current Usage

Billing Period From 08-22-06 To 09-18-06 27 days

Meter Reading

Meter Number P1754529
Current Actual 1593 09-18-06
Previous Actual 1576 08-22-06
Difference 17 (100 Cubic Feet)

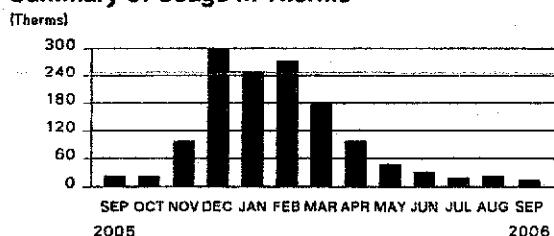
Therm Conversion

17 x 1.016 BTU Factor = 17.27 Therms

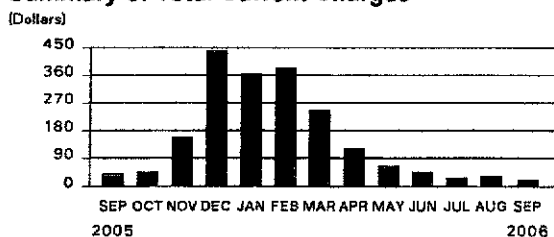
Average Daily

	Sep 2005	Sep 2006
Therms Used	.85	.64
Temperature	72 °F	68 °F

Summary of Usage in Therms



Summary of Total Current Charges



The gas charge for September is 58.59 cents per therm and for August it was 62.48 cents per therm. The gas charge reflects how much Peoples Gas pays for gas, which is what you pay.

See back of bill for definitions of terms used on this bill.

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Kathleen Markie Miller

:

-vs.-

:

06-0571

**The Peoples Gas Light and Coke
Company**

:

:

Complaint as to billing and/or charges
in Chicago, Illinois.

:

:

NOTICE OF FILING

TO: Parties on Certificate of Service:

PLEASE TAKE NOTICE that on October 9, 2006, I filed with the Chief Clerk of the Illinois Commerce Commission, Plaintiff's Response to Motion to Dismiss attached hereto, copies of which are hereby served upon you.



Kathleen Markie Miller
1843 North Normandy Avenue
Chicago, IL. 60707
(773) 531-2563


CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2006, I served a copy of the attached Stipulation and Plaintiff's Response to Motion to Dismiss by causing copies thereof to be sent via United Parcel Service Air Package, addressed to each of the parties indicated below:

Ms. Elizabeth A. Rolando
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL. 62701

Mr. Mark L. Goldstein,
Attorney for Respondent
108 Wilmot Road
Suite 330
Deerfield, IL. 60015

Mr. Terrance Hilliard
Administrative Law Judge
Illinois Commerce Commission
160 N. LaSalle Street
Suite C-800
Chicago, IL. 60601



Kathleen Markie Miller